

petitioned the Commission to reconsider that Order on similar grounds to those expressed here.<sup>5</sup>

The Bureau's reasoning in its Waiver Order that determined that interexchange carriers would not be harmed by allowing per call compensation in the absence of real time ANI information identifying the payphone call, does not apply to prepaid card providers. Prepaid card services—which are growing exponentially and today account for an estimated 3.5 billion calls annually—are a unique and highly competitive market segment that must be considered completely separate from ordinary interexchange services. Unlike ordinary interexchange services, prepaid services have postalized rates and are paid for in advance, and thus do not involve any bill rendered to subscribers. As a consequence, the one and only time a prepaid card provider has to recover a payphone charge from its customer is at the time a payphone-originated call is placed.<sup>6</sup>

What this means is that the inability to identify and/or block payphone calls, in real time, will significantly harm prepaid card providers, impede competition in this burgeoning market, and injure consumers. Without the ability to identify payphone calls and recover PSP charges when a call is placed, prepaid card providers will be forced either to (a) pay for such costs out of their already thin profit margins, or (b) increase rates for consumers for all prepaid calls, whether or not payphone-originated. Neither result is in the public interest.

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<sup>5</sup> ITA Petition for Reconsideration of the Bureau's October 7, 1997 Waiver Order, filed Nov. 6, 1997.

<sup>6</sup> With payphone-specific ANIs, prepaid providers would be in a position to provide a customized announcement (with appropriate tariff modifications as necessary) to customers, disclosing  
(Continued on next page)

In addition to harms caused by the unavailability of ANI information digits in real time, prepaid card providers are also harmed when LECs provide inaccurate ANI information digits. For example, at least one LEC is sending ANI information digits that indicate a call has been placed from a payphone when the call has actually been placed from a residential line with toll restrictions. Believing that the call has been provided from a payphone, a prepaid provider may play an announcement to advise its customer that an additional \$0.284 payphone charge will be deducted from their card even though the call is made from a residential line. This has already lead to numerous customer complaints and harmed prepaid card providers relationships with their customers. In addition it directly harms consumers who unknowingly will pay payphone charges, even though their calls are placed from a residential line. Therefore, the Commission must not only ensure that ANI information digits are provided, but that they are the correct ones before enabling PSPs to collect per call compensation.

Given the highly competitive nature of the prepaid card industry, no prepaid card providers will be able to absorb charges of 28.4 cents per call and have their products remain economically viable. Many of the smaller providers and new entrants attracted to this market, where entry costs and barriers are very low, will be driven out of business. Moreover, because per-minute rates for cards already in circulation cannot be changed, prepaid providers will be forced to immediately increase per-minute rates, even higher than the average pro rate portion of the 28.4 cents, for prepaid calls whether or not originated from payphones. This increase in prices will necessarily be

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that the card will be "decremented" a particular value or number of "units" to recover the payphone-assessed per-call charge. In the absence of real-time information, this is plainly not possible.

imposed on consumers who would otherwise have the choice of avoiding payphone charges by using a non-payphone with their prepaid card. In sum, the lack of real-time ANI information will substantially injure competition, prepaid providers and consumers.

The Bureau's assumption in its Waiver Order that a waiver of the LEC and PSP requirement to deliver ANI information digits "will not significantly harm any parties" is wrong. Prepaid providers will be irreparably injured without the ability to track and/or block payphone originated calls in real-time. Consumers of these innovative services—including those calling from non-payphones—will necessarily face higher rates as well. ITA therefore urges the Commission to deny these waivers and preclude PSPs from assessing any per-call compensation charges on providers of prepaid services until accurate, real time information is available for prepaid carriers to identify payphone calls and recover per-call payphone compensation charges from their customers. Only in this way can the interests of providers and consumers of prepaid card services be protected in light of the unique nature of prepaid services.

### CONCLUSION

For all these reasons, the Commission should deny the waiver requests and preclude PSPs from assessing any per-call compensation charges on providers of prepaid card services until payphone-specific coding digits are accurately transmitted from each payphone, and are not inaccurately transmitted from other types of phones.

Respectfully submitted,

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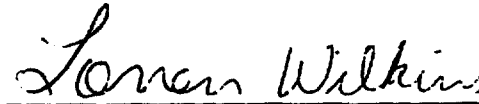
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Dated: November 6, 1997

**CERTIFICATE OF SERVICE  
FCC DOCKET NO. 96-128**

I, Lorren Wilkins, do hereby certify on this 6th day of November, 1997, that I have served a copy of the foregoing Reply Comments of International Telecard Association via United States first class mail, postage prepaid, to the parties below.



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# **ATTACHMENT**

## **3**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

**REPLY COMMENTS OF THE INTERNATIONAL  
TELECARD ASSOCIATION IN SUPPORT OF ITS  
PETITION FOR PARTIAL RECONSIDERATION**

The International Telecard Association ("TTA"),<sup>1</sup> by its attorneys, respectfully submits these reply comments in support of its November 6, 1997 Petition for Partial Reconsideration ("Petition") of the Common Carrier Bureau's *Coding Digit Waiver Order*.<sup>2</sup>

**INTRODUCTION**

The *Coding Digit Waiver Order* granted a temporary, six-month waiver of the requirement, established in the *Payphone Orders*,<sup>3</sup> that local exchange carriers ("LECs") and payphone service providers ("PSPs") transmit payphone-specific coding digits sufficient to allow real-time identification of "800" and access code calls originated from

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<sup>1</sup> Members of the Association that are Regional Bell Operating Companies ("RBOCs") have not participated in the development of this Petition.

<sup>2</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order, DA 97-2162 (rel. Oct. 7, 1997) ("Coding Digit Waiver Order"); Public Notice, DA 97-2734 (rel. Dec. 31, 1997).

<sup>3</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("Payphone Order"), Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("Order on Reconsideration") (collectively "Payphone Orders"), *vacated and remanded in part, Illinois Public Telecommunications Assoc. v. FCC*, 117 F.3d 555 (D.C. Cir. 1997); Second Report and Order, FCC 97-371 (rel. Oct. 9, 1997).

payphones. ITA's Petition explained that in approving this waiver, the Bureau overlooked the fundamental difference between prepaid phonecard services and ordinary interexchange telecommunications services; unlike other interexchange carriers ("IXCs"), prepaid providers cannot recover payphone charges from their customers *without the ability to identify payphone calls in real-time.* (Petition at 1-3).

None of the commenting parties disputes this plainly correct factual predicate for the Petition. Indeed, as WorldCom, Inc. ("WorldCom") observed:

*Prepaid card service providers have but one opportunity to recover payphone compensation charges from users of their cards. This opportunity is at the time a call is placed. The use of ANI lists to correlate compensable calls, a dubious prospect for postpaid services, is completely impossible for prepaid services.*

(WorldCom Comments at 3 (emphasis supplied)). Thus, the Bureau's assumption that a limited waiver "will not significantly harm any parties"<sup>4</sup> is wrong because it "clearly does not apply to prepaid card providers." (*Id.* at 2-3.)

Those commenters opposing the ITA Petition—LECs and independent payphone providers—assert a jumbled array of rhetorical and legally irrelevant claims in response to this irrefutable fact. Claiming that the Section 276 command for "fair" compensation ensures only that PSPs can recover their costs from users (including prepaid carriers) of their payphones, the American Public Communications Council ("APCC") argues that a carrier's ability to recover these PSP charges "specifically from payphone-using customers . . . is in no way a condition precedent to the payment of compensation to payphone providers." (APCC Comments at 2). The RBOC/GTE/SNET Payphone

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<sup>4</sup> Coding Digit Waiver Order ¶ 12.

Coalition ("LEC Coalition") argues, incredibly, that prepaid carriers are not liable for payphone charges under the Commission's rules, claiming (incorrectly) that prepaid providers are not facilities-based carriers. (LEC Coalition Comments at 2).

These oppositions are untenable because they ignore both the unique, highly competitive reality of the prepaid phonecard market and the centrality to the Commission's "market-based" payphone compensation scheme of carriers' ability to identify (and block) calls from payphones. ITA estimates that the *Coding Digit Waiver Order* will impose, in the November to March time period, at least \$31.8 million in unrecoverable charges on prepaid phonecard providers—destroying the highly competitive (and pro-consumer) rate structures in this emerging industry segment. (See pp. 6-7 below.)

Furthermore, the Commission made LEC and PSP transmission of payphone-specific coding digits a condition precedent to PSP recovery of payphone compensation precisely in order to ensure call-blocking abilities by PSPs' access "customers." Hence, in affirming the Commission's market-based scheme for payphone compensation, the Court of Appeals emphasized that a "carrier pays" approach is reasonable because carriers will have the ability to "block calls from payphones with excessive per-call compensation charges."<sup>5</sup>

The Bureau waived the coding digit requirement only because it concluded that postpaid billing of subscribers making payphone-originated calls would be a functional substitute, in the short term, for call blocking. Consequently, because this option is

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<sup>5</sup> *Illinois Public Telecom. Assoc.*, 17 F.3d at 566.

concededly unavailable to prepaid card service providers, LECs and PCPs must be precluded from imposing per-call charges on prepaid carriers until they transmit the payphone-specific coding digits allowing these carriers to have the same cost-recovery abilities as all other IXC's.

## DISCUSSION

### **I. THE COMMISSION'S "ANOMALOUS" WAIVER IMPOSES SIGNIFICANT HARM ON PREPAID CARRIERS AND SHOULD BE VACATED IMMEDIATELY**

There is no question that the *Coding Digit Waiver Order* impose significant harm on providers of prepaid phonecard services. WorldCom "is experiencing first hand the problems which are the foundation for ITA's Petition," including massive customer service problems arising from misidentification of "1+" calls as payphone calls due to the inaccurate transmission of "07" coding digits. (WorldCom Comments at 1, 4 n.4; see ITA Petition at 4 n.6). As the Telecommunications Resellers Association ("TRA") explained, "without 'real-time' delivery of payphone-specific coding digits, pre-paid calling card providers will confront the 'Hobson's Choice' of suffering either the adverse financial consequences of absorbing amounts paid to PSPs for payphone-originated access code calls or the adverse competitive consequences of raising rates for all calls." (TRA Comments at 3).

This harm is important for two reasons. First, the prepaid phonecard market is among the most competitive of all current interstate telecommunications markets, with rates ranging as low as 10-20 cents per minute and without the significant "surcharges" (as much as \$1.60-\$2.25 per call) assessed by PSPs for "0+" calls and by IXCs for traditional calling card calls. Given the absence of significant barriers to entry, prepaid

phonecard services are thus a rapidly growing industry segment characterized by extremely low profit margins and offering real communications alternatives (frequently for the first time) to low-income and traveling consumers. Indeed, the Commission has expressly found that prepaid phonecard services offer "low-cost services targeted to meet the needs of those with low incomes or non-permanent living arrangements."<sup>6</sup>

Depriving prepaid providers of the ability to identify payphone calls in real-time means that the 28.4 cents per-call payphone compensation charges cannot be assessed on prepaid users making payphone calls. Contrary to the LEC Coalition claim, however, prepaid providers cannot "as a matter of course pass on such charges to their customers" (LEC Coalition Comments at 3), because that would entail raising rates for *all* prepaid card users, in turn reducing the competitiveness of this new communications alternative. Unlike LECs and PSPs, prepaid carriers do not operate in local monopoly markets and do not enjoy the locational "mini-monopolies" characteristic of payphone providers (TRA Comments at 4); they are not able to "pass on" all cost increases to customers, but instead must price their services at competitive market levels.

And even if prepaid providers *could* raise rates across the board for all customers, that would simply impose a payphone "tax" that falls disproportionately on non-payphone prepaid users—the same low-income subscribers that the Commission's universal service policies are designed to protect. Indeed, mandating that prepaid providers raise rates for their non-payphone customers violates the long-standing Commission policy that *costs should be recovered from cost-causers*. In short, the financial impact of re-

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<sup>6</sup> *The Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network*, Notice of Proposed Rulemaking, 10 FCC Rcd. 1303 ¶ 38 (1996).

quiring payphone compensation without payphone-specific coding digits will skew the rate structures for prepaid services in ways that harm consumers, contravene FCC policy and fundamentally jeopardize the competitiveness of the prepaid industry.

Second, the financial harm to prepaid carriers, as WorldCom observes, “eviscerates the entire call tracking system which lies at the heart of the market-based’ per-call compensation scheme.” WorldCom Comments at 2. The premise of the *Payphone Orders*, and as noted above the basis for the Court’s affirmance of the carrier-pays methodology, was that a “market” for access code calling will develop as a result of negotiations between carriers and PSPs. However, stripped of their ability to reject payphone calls, and without the information necessary to track and “bill” payphone charges (*i.e.*, in real time), prepaid carriers will plainly be unable to enter into meaningful negotiations with PSPs. Since they cannot block the calls or recover payphone compensation charges without payphone-specific coding digits, prepaid carriers will have no alternative but to accept whatever charges are demanded by PSPs. Simply put, there can be no market competition for access code and “800” compensation rates without the transmission of accurate payphone-specific coding digits.

The magnitude of this adverse financial impact is easily quantifiable. According to a survey of ITA’s members, 42% of all payphones today are still transmitting the “07” ANI II digits that include all toll-restricted lines, not limited to payphones. Using industry wide data for total prepaid card revenues (approximately \$2.0 billion per year), average price per prepaid call (\$1.25) and the average proportion of prepaid calls placed from payphones (40%), ITA calculates that the *Coding Digit Waiver Order* allows PSPs to assess \$31,800,000 in unrecoverable payphone compensation charges on prepaid carri-

ers during the five month duration of the waiver.<sup>7</sup> This sum, while an insignificant proportion of LEC and PSP revenues, is very substantial for the embryonic prepaid industry, and represents costs that are completely unrecoverable to these providers. Put another way, at 28.4 cents per call, payphone compensation represents an effective “per-call” rate of 11.4 cents for *each* payphone-originated prepaid card call (40% of \$0.284), or nearly 10% of average revenues for these calls—virtually eliminating any profit margin. (See TRA Comments at 4).

Similar financial consequences are not incurred by other IXC's because, as the *Coding Digit Waiver Order* reasoned, these carriers can still bill customers for payphone compensation charges even if they lack real-time identification of payphone-originated calls. Although the *Coding Digit Waiver Order* recognized that the absence of real-time ANI information makes it impossible for IXC's “to block those calls on a real-time basis,” *Order* ¶ 13, the Bureau pointed out that lists of payphone ANIs will still be available to IXC's, allowing them to “identify[] payphone calls for the purpose of determining the number of calls for which compensation is owed.” *Id.* ¶ 12. For prepaid providers, however, the “Hobson's Choice” described by TRA and WorldCom means that these carriers must either absorb the costs or raise all their rates, and risk going out of business in either event.<sup>8</sup>

Contrary to APCC and the LEC Coalition, ITA's Petition does *not* seek any general “exemption” for prepaid providers from paying payphone compensation. APCC

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<sup>7</sup> With 1.6 billion annual prepaid calls (\$2.0 billion/\$1.25), approximately 680 million (1.6 billion x 40%) are placed from payphones. Of these, 268.8 million (680 million x 42%) are placed from payphone that do not provide coding digits allowing “decrementing” of the card for payphone compensation charges. Adjusting for the 5/12 year in which the waiver will be outstanding (112 million calls), the total unrecoverable payphone compensation charges for the duration of the waiver are  $112,000,000 \times \$0.284 = \$31,800,000$ .

Comments at 3; LEC Coalition Comments at 2-3. ITA has always supported fair compensation for PSPs, and has no objection to paying these charges for PSPs and LECs who have met the Commission's requirement to transmit payphone-specific coding digits. But it is neither "fair" nor consistent with the Commission's Administrative Procedure Act obligations to force ITA's members to pay these charges when, alone among IXCs, they have no means of either blocking the calls or recovering the charges from payphone customers. The Bureau's *Coding Digit Waiver Order* is internally inconsistent and in conflict with the D.C. Circuit's rationale in *Illinois Public Telecommunications*. It should be vacated immediately.

Finally, the LEC Coalition misstates the relief ITA's Petition seeks. ITA has not asked that payphone compensation for all LECs and PSPs be suspended for the duration of the coding digit waiver. (LEC Coalition Comments at 1, 2). Rather, ITA requested that the Commission suspend per-call compensation charges for providers of prepaid card services "until PSPs transmit accurate payphone specific coding digits." (Petition at 6; see WorldCom Comments at (payphone compensation exempted "for calls originating from payphone which do not transmit real-time payphone info digits as part of the ANI")). PSPs that have already complied with the Commission's coding digit obligation will receive compensation from prepaid carriers; those that do not should not receive compensation until they comply. Nor, contrary to the LEC Coalition, is ITA seeking to avoid the assessment of charges by IXCs on resale prepaid providers (LEC Coalition Comments at 2). The Commission has ruled, however, that "facilities-based" carriers liable for payphone compensation charges include resellers operating a

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<sup>8</sup> WorldCom Comments at 3; TRA Comments at 3.

switch (Order on Reconsideration ¶ 92), and a large and growing number of prepaid carriers have their own prepaid card switching platforms. Obviously, the obligation for a prepaid provider to pay payphone compensation should be deferred only if the provider qualifies as a facilities-based carrier under this rule and is subject to a payment obligation to PSPs in the first place.

**II. THE COMMISSION SHOULD CONSIDER CREATING COMPENSATION INCENTIVES FOR LECs TO MEET THEIR PAYPHONE CODING DIGIT RESPONSIBILITIES WITH ALL DELIBERATE SPEED**

Although neither the LEC Coalition nor APCC mentions it, the fact is that given current telecommunications technology, the transmission of payphone-specific coding digits is a central office functionality under the control of the LECs. Given the LECs' extremely late notice to the Commission that they could not meet the October 1997 deadline for implementing this capability (Petition at 2-3), however, serious questions exist as to whether the LECs are pursuing the necessary technical updates as quickly as possible. Indeed, some LECs have indicated to ITA that they intend to seek extension of the *Coding Digit Waiver Order* when it expires in March 1998.

This state of affairs penalizes both prepaid providers *and* the independent PSPs represented by APCC. Independent PSPs cannot meet the Commission-imposed obligation without LEC cooperation, and ITA's members (even under the limited relief requested in the Petition) will be responsible for paying compensation to many more LEC payphones than independent PSPs. Meanwhile, the LECs themselves have no incentive to provide coding digit functionalities except in those central offices where they have a significant installed base of payphones.

The solution to this dilemma, ITA believes, is for the Commission to place the burden of solving the technical issues on the shoulders of those who are responsible for the lack of accurate ANI information digits—the LECs themselves. Unless and until LECs have a financial incentive to supply payphone-specific coding digits to independent PSPs, they will have no reason to accelerate their work in this area, and the waiver issues being litigated here will surely persist for many more months, if not years. Accordingly, ITA recommends that the Commission consider alternative compensation rules that would create an incentive for LECs to provide independent PSPs with this crucial information. Specifically, ITA proposes that LECs should be barred from collecting payphone compensation charges from prepaid payphone card providers—even as to LEC-owned payphones that are not subject to the *Coding Digit Waiver Order*—until they supply payphone-specific coding digits to all independent PSPs.

In a very real sense, independent PSPs and prepaid card providers are both innocent parties dependent on the LECs for a solution to the present impasse. While “fair compensation” under Section 276 must, contrary to APCC, encompass the impact of payphone charges on carriers in light of their ability to recover these charges, it cannot properly be assessed in context without taking into account the central role of LECs in meeting the obligation established in the 1996 *Payphone Orders*. Consequently, precluding LECs from recovering payphone compensation charges for calls placed from their own payphones would permit the Commission to assign financial responsibility to the parties, LECs, who are responsible technically for providing the payphone-specific information that lies at the heart of the Commission’s market-based scheme for payphone compensation.

## CONCLUSION

For all these reasons, the Commission should modify the *Coding Digit Waiver Order* to preclude PSPs from assessing per-call compensation charges on providers of prepaid card services for calls from any payphone that does not provide payphone-specific coding digits, and should consider precluding LECs from assessing payphone compensation charges for their own payphones until the LEC provides payphone-specific coding digits to independent PSP payphones.

Respectfully submitted,

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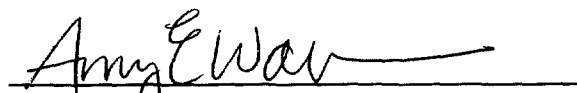
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Dated: January 23, 1998.

**CERTIFICATE OF SERVICE**

I, Amy E. Wallace, do hereby certify on this 8th day of April, 1998, that I have served a copy of the foregoing document via messenger to the parties below:

  
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